

Paramedical Specialties Services, Inc. and Union Nacional De Trabajadores De La Salud, Local 1199, SEIU. Case 24-CA-7456

October 11, 1996

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS BROWNING AND HIGGINS

Upon a charge, amended charge, and second amended charge filed by the Union on June 11 and 27, and July 31, 1996, the General Counsel of the National Labor Relations Board issued a complaint on July 31, 1996, against Paramedical Specialties Services, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although properly served copies of the charges and complaint, the Respondent failed to file an answer.

On September 11, 1996, the General Counsel filed a Motion for Summary Judgment with the Board. On September 13, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated August 28, 1996, notified the Respondent that unless an answer were received by September 4, 1996, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a Puerto Rico corporation, with an office and place of business in Hatillo, Puerto Rico, has been engaged in providing ambulance and oxygen services to hospitals and individuals in Puerto Rico pursuant to contracts with the

Health Department of the Commonwealth of Puerto Rico. During the 12-month period preceding issuance of the complaint, the Respondent, in conducting its business operations, derived gross revenues in excess of \$50,000 and purchased and received at its Hatillo, Puerto Rico facility goods valued in excess of \$5000 directly from points outside the Commonwealth of Puerto Rico.¹ We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About June 3, 17, 23, 25, and 26, 1996, the Respondent interrogated its employees about their union activities.

About June 25 and 26, 1996, the Respondent solicited its employees to sign a letter repudiating the Union. About June 25, 1996, the Respondent informed its employees that those who did not sign the letter would be dismissed.

About June 17, 1996, the Respondent informed its employees that those who were union supporters would be fired.

About June 19, 1996, the Respondent informed its employees that they had been discharged because of their membership in and activities on behalf of the Union.

On the following dates the Respondent discharged the respective employees because the named employees formed, joined, or assisted the Union and engaged in concerted activities and to discourage employees from engaging in these activities:

Jose Sanchez	May 26, 1996
Elisa Valentin	June 6, 1996
Jorge I. Alvarez	June 7, 1996
Orlando Luciano	June 8, 1996
Jose Luis Ramos	
Acevedo	June 18, 1996
Iris Cruz	June 23, 1996
Javier Colon	June 26, 1996

¹ The Respondent clearly is within the Board's statutory jurisdiction because it purchases and receives goods valued in excess of \$5000 directly from points outside the Commonwealth of Puerto Rico. While the nature of the contracts with the Commonwealth of Puerto Rico, pursuant to which the Respondent provides services to individuals and hospitals within the Commonwealth of Puerto Rico valued annually in excess of \$50,000, is not clearly defined, the Respondent has failed to raise the issue of whether the Respondent meets the Board's discretionary jurisdictional standards. Where a party contests the Board's assertion of jurisdiction under its discretionary standard, the issue must be timely raised. *Pollack Electric Co.*, 214 NLRB 970 fn. 4 (1974).

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act. By discharging the named employees, the Respondent has also been discriminating in regard to the hire or tenure or terms and conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging Jose Sanchez, Elisa Valentin, Jorge I. Alvarez, Orlando Luciano, Jose Luis Ramos Acevedo, Iris Cruz, and Javier Colon, we shall order the Respondent to offer the discriminatees immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and to make them whole for any loss of earnings and other benefits suffered as a result of the discrimination against them. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharges, and to notify the discriminatees in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, Paramedical Specialties Services, Inc., Hatillo, Puerto Rico, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating its employees about their union activities.

(b) Soliciting its employees to sign a letter repudiating Union Nacional De Trabajadores De La Salud, Local 1199, SEIU or informing its employees that those who do not sign the letter will be dismissed.

(c) Informing its employees that union supporters would be fired or that they had been discharged because of their membership in or activities on behalf of the Union.

(d) Discharging or otherwise discriminating against employees because they formed, joined, supported, or assisted the Union, or engaged in concerted activities, or to discourage employees from engaging in such activities.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Jose Sanchez, Elisa Valentin, Jorge I. Alvarez, Orlando Luciano, Jose Luis Ramos Acevedo, Iris Cruz, and Javier Colon full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

(b) Make the foregoing individuals whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, expunge from its files any and all references to the unlawful discharges, and within 3 days thereafter notify the foregoing individuals in writing that this has been done and that the unlawful conduct will not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Hatillo, Puerto Rico, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 24, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current

² If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

employees and former employees employed by the Respondent at any time since June 11, 1996.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate our employees about their union activities.

WE WILL NOT solicit our employees to sign a letter repudiating Union Nacional De Trabajadores De La Salud, Local 1199, SEIU or inform our employees that those who do not sign the letter will be dismissed.

WE WILL NOT inform our employees that union supporters will be fired or that they have been discharged because of their membership in or activities on behalf of the Union.

WE WILL NOT discharge or otherwise discriminate against employees because they formed, joined, supported, or assisted the Union, or engaged in concerted

activities, or discourage employees from engaging in such activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, offer Jose Sanchez, Elisa Valentin, Jorge I. Alvarez, Orlando Luciano, Jose Luis Ramos Acevedo, Iris Cruz, and Javier Colon full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.

WE WILL make Jose Sanchez, Elisa Valentin, Jorge I. Alvarez, Orlando Luciano, Jose Luis Ramos Acevedo, Iris Cruz, and Javier Colon whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against them, in the manner set forth in this decision.

WE WILL, within 14 days from the date of the Board's Order, expunge from our files any and all references to the unlawful discharges of Jose Sanchez, Elisa Valentin, Jorge I. Alvarez, Orlando Luciano, Jose Luis Ramos Acevedo, Iris Cruz, and Javier Colon, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the unlawful conduct will not be used against them in any way.

PARAMEDICAL SPECIALTIES SERVICES,
INC.